

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MILTON LOGGINS,

Defendant-Appellant.

UNPUBLISHED

November 17, 2005

No. 256741

Wayne Circuit Court

LC No. 04-003701-01

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for voluntary manslaughter, MCL 750.321, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. We affirm.

On appeal, defendant argues that he was denied the effective assistance of counsel because his attorney did not request a jury instruction on self-defense. After review of the record before us, we disagree. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000).

To establish ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's errors, the outcome of the trial would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). A defendant is entitled to have his counsel present all substantial defenses, i.e., defenses that would have affected the outcome of the proceedings. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994); *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). And, a defendant has a right to a properly instructed jury, but the evidence must support a particular instruction. *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000); *People v Truong*, 218 Mich App 325, 341; 553 NW2d 692 (1996).

Here, the evidence did not support a jury instruction on self-defense. Generally, a justified killing in self-defense requires that the defendant honestly and reasonably believe he is in imminent danger of death or great bodily harm and that deadly force is necessary to prevent his death or great bodily harm. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). In this case, a jury could not have found that defendant reasonably believed he was in imminent danger of death or great bodily harm at the moment he fired the fatal shots or that deadly force

was necessary to prevent his own harm. Although the evidence suggests that the decedent was kicking and knocking on the front door, as well as yelling, when the door was opened, the decedent paused to speak to and hug the woman who opened the door. There is no evidence that the decedent had a gun drawn or that he was moving toward defendant in an immediately threatening way after the door was opened. In fact, witnesses testified that they did not see anything in the decedent's hands before defendant fired. Further, under the circumstances presented, defendant, at minimum, had less violent options to defend himself. Accordingly, defendant's attorney was not ineffective for failing to request a self-defense instruction and defendant was not deprived of a substantial defense.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood